

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
IMPLEMENTATION OF THE SATELLITE HOME)	
VIEWER IMPROVEMENT ACT OF 1999)	CS Docket No. 00-96
)	DA 02-31
BROADCAST SIGNAL CARRIAGE ISSUES)	
)	
To: The Commission)	

COMMENTS OF CORNERSTONE TELEVISION, INC.

Cornerstone Television, Inc., licensee of Station WPCB-TV, Greensburg, Pennsylvania (“WPCB-TV” or “Cornerstone”), hereby submits comments on the Emergency Petition filed on January 4, 2001 (the “Petition”) by the National Association of Broadcasters (“NAB”) and the Association of Local Television Stations (“ALTV”) in the above-referenced proceeding.

WPCB-TV broadcasts Christian-oriented programming and is not affiliated with any major or emerging network. Its experience provides a case study demonstrating the reality identified by NAB and ALTV: EchoStar is relegating stations that it does not favor “to remote satellites that can be viewed only if subscribers obtain a second dish, while offering other stations on EchoStar’s main satellites, which subscribers can easily view with their existing equipment.”¹ Although WPCB-TV is licensed to a community within the Pittsburgh DMA, and EchoStar is providing local-into-local service in this market, WPCB-TV has been given a clearly inferior position on a remote satellite that requires viewers to install a second satellite dish and additional receivers. It is the only station in the market relegated to this inferior position

¹ Emergency Petition of National Association of Broadcasters and Association of Local Television Stations to Modify or Clarify the Rule, filed Jan. 4, 2002, at 1 (the “Petition”).

requiring viewers to obtain a second satellite dish.² At the same time, EchoStar subscribers can view all other qualified stations in the market from the DBS service's primary CONUS service. As the Petition notes, this situation "makes a mockery of the carry-one carry-all provisions of the SHVIA."³

By creating this unequal distribution system, EchoStar undermines the purposes of DBS must-carry rules: to ensure the continued availability of free over-the-air broadcasting. This applies not just to programming able to attract the biggest audiences, but to all over-the-air television programming on full-power stations. EchoStar's actions undermine this clear policy by making impermissible distinctions between stations that Congress did not intend and, in so doing, create clear disincentives for DBS customers in the Pittsburgh market to view WPCB-TV.

These disincentives are evidenced in complaints that WPCB-TV has received from potential viewers unable to receive the station on their existing EchoStar array, despite subscribing to the local-into-local package. Some viewers have stated they simply do not wish to have another dish installed on their homes for aesthetic reasons or because of the inconvenience involved. In at least one case, a viewer complained that a technician dispatched by EchoStar to his single family home was unable to effect service at the angle required to receive signals from the secondary satellite due to physical obstructions. The Petition points out that apartment dwellers and town house dwellers are particularly affected by such physical constraints.⁴

Before EchoStar initiated this new policy, WPCB-TV staff recommended EchoStar to viewers seeking DBS services. Many of these viewers who relied on WPBC-TV's advice are

² See Dish Network (EchoStar) web site, local programming page (visited Jan. 14, 2001) <<http://www.dishnetwork.com/content/programming/locals/index.shtml>>.

³ *Id.*

⁴ Petition, *supra* n.1 at 8.

now being subjected, at a minimum, to the inconveniences associated with installing a second dish and receiver, or are unable to receive WPCB-TV programming at all due to the physical constraints of their place of reception – even if they are among the minority of potential viewers willing to subject themselves to the inconvenience of installing a second dish. Ultimately, however, it does not matter if a viewer is unable to take service from a second dish, or unwilling to do so; by singling out WPCB-TV for inferior local-into-local service, EchoStar is impermissibly discriminating.

Both the legislative history and the Commission’s own proceedings direct DBS providers to act in a non-discriminatory manner toward all qualifying over-the-air broadcasters. As the NAB and ALTV noted: Congress’s “objective in enacting the carry-one carry-all provision of the SHVIA was to protect local broadcasters ‘from the harmful effects of satellite cherry-picking.’”⁵ This includes economic harms created when a DBS provider creates structural disincentives to subscribers viewing certain free over-air-broadcasters. Such structural disincentives as a second dish requirement diminish the total audience for stations relegated to secondary satellites. This violates Congress’s underlying intent that “SHVIA’s carry one, carry all rule was designed to preserve a rich mix of broadcast outlets for consumers who do not (or cannot) pay subscription television services.”⁶ EchoStar is conducting a cherry-picking operation in the Pittsburgh DMA by granting network stations with larger audiences favored satellite slots while relegating stations with a smaller audience, such as WPCB-TV, to satellite distribution positions that only the most determined viewer will access. As noted above, even dogged determination

⁵ Petition, *supra* n.1 at 2 (citing *Satellite Broadcasting & Communications Ass’n. v. FCC*, Nos. 01-1151, 01-1271, 01-1272, 2001 U.S. App. LEXIS 26120, at *27 (4th Cir. 2001)).

will not overcome physical constraints that make reception of secondary satellite transmissions impossible. Insofar as the policy underlying cable and DBS must-carry is identical, the Commission should provide similar relief here – insuring the availability and soundness of WPBC-TV’s unique voice in the market.

Cornerstone believes that the Commission should act promptly to stop EchoStar’s cherry-picking by issuing a declaratory ruling, rather than opening more lengthy Rule Making proceedings. Rule Making would allow EchoStar to continue to inflict harm upon stations it does not favor over the course of months – if not years – until the process reaches finality. In issuing a declaratory ruling here, the Commission would be acting in a manner wholly commensurate with its legislative mandate with regard to DBS local-into-local requirements. “Congress enacted the carry one, carry all rule to ‘preserve free television for those not served by satellite or cable systems and to promote widespread dissemination of information from a multiplicity of sources.’”⁷ As noted above, both interests are undermined when a DBS provider, such as EchoStar, creates roadblocks that dissuade or eliminate potential viewers for stations such as WPCB-TV, without imposing equal constraints on the reception of other qualified stations in the market. Indeed, the Commission recently acted in support of such diversity by ordering the carriage of a Christian-oriented television station on certain nearby cable systems.⁸ The Commission took note of that station’s particular role: “as a religious station, the

Footnote continued from previous page

⁶ *Satellite Broadcasting & Communications Ass’n. v. FCC, supra* n.5 at *24.


⁷ *Id.* at *45 (citing H.R. Conf. Rep. No. 106-464, at 101 (1999) (“SHVIA Conference Report”))).

⁸ *In the Matter of: American Christian Television Services, Inc.*, DA-02-32 (CSR-5733A)(Released, Jan. 11, 2002).

programming it provides is of unique interest to the residents of the requested communities and is not duplicated by any other stations serving the communities.”⁹ This is also the unique role that WPCB-TV plays in the Pittsburgh market.

The Commission should act at once to ensure that EchoStar does not act as an editorial gatekeeper; it should promptly issue a declaratory ruling pursuant to 47 C.F.R. 1.2 that puts an end to EchoStar’s attempts to create a discrimination-creating loophole where none exists.

Respectfully submitted,



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Dated: January 22, 2001

⁹ *Id.* at ¶9.

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of January 2002, a true and correct copy of the Foregoing COMMENTS OF CORNERSTONE TELEVISION, INC. were sent by postage prepaid, first-class mail to the following:

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